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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44062
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2015-18368
v.)	
)	
MALINA KAE CHAVEZ,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Malina Kae Chavez pleaded guilty to one count of possession of a controlled substance. The district court imposed a sentence of seven years, with two years fixed. On appeal, Ms. Chavez asserts that the district court abused its discretion when it imposed the sentence.

Statement of the Facts & Course of Proceedings

In December of 2015, Ms. Chavez was arrested after she was apprehended by a Dillard's employee who reported that Ms. Chavez had stolen several items from the

store. (Presentence Report (*hereinafter*, PSI), pp.3, 49.)¹ When Ms. Chavez was searched incident to her arrest, officers discovered approximately \$700 in stolen merchandise, a used methamphetamine pipe, and 20 hydrocodone pills. (PSI, pp.3, 49.)

Ms. Chavez was originally charged with one count of felony burglary, one count of felony possession of a controlled substance, and one count of possession of drug paraphernalia. (R., pp.16-17.) Pursuant to a plea agreement, Ms. Chavez pleaded guilty to possession of a controlled substance. (2/8/16 Tr., p.14, Ls.4-23.) In exchange, the State agreed to not file an Information Part Two, dismiss the other counts, and recommend a sentence of seven years, with two fixed. (2/8/16 Tr., p.5, Ls.6-20; R., pp.21-27.)

At the sentencing hearing, the State recommended that the district court impose a sentence of seven years, with two years fixed. (3/21/16 Tr., p.6, Ls.14-17.) Ms. Chavez's counsel did not make a specific recommendation but asked the district court to impose a sentence that would help Ms. Chavez with her mental health and substance abuse problems. (3/21/16 Tr., p.9, Ls.17-25.) The district court imposed a sentence of seven years, with two years fixed, and recommended that Ms. Chavez receive mental health and substance abuse treatment. (3/21/16 Tr., p.12, Ls.21-25; R., pp.38-39.) Ms. Chavez filed a Notice of Appeal that was timely from the district court's judgment of conviction. (R., pp.34-35.)

¹ All citations to the PSI and its attachments refer to the 64-page electronic document.

ISSUE

Did the district court abuse its discretion when it imposed a sentence of seven years, with two years fixed, following Ms. Chavez's plea of guilty to possession of a controlled substance?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Sentence Of Seven Years, With Two Years Fixed, Following Ms. Chavez's Plea Of Guilty To Possession Of A Controlled Substance

Based on the facts of this case, Ms. Chavez's sentence of seven years, with two years fixed, is excessive because it is not necessary to achieve the goals of sentencing. When there is a claim that the sentencing court imposed an excessive sentence, the appellate court will conduct an independent examination of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

Independent appellate sentencing examinations are based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). When a sentence is unreasonable based on the facts of the case, it is an abuse of discretion. *State v. Nice*, 103 Idaho 89, 90 (1982). Unless it appears that confinement was necessary "to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case," a sentence is unreasonable. *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). Accordingly, if the sentence is excessive, "under any reasonable view of the facts," because it is not necessary to achieve these goals, it is unreasonable and therefore an abuse of discretion. *Id.*

There are several mitigating factors that illustrate why Ms. Chavez's sentence is excessive under any reasonable view of the facts. First, Ms. Chavez struggles with severe mental health problems. Her mental health examination report indicated that she suffered from Bipolar disorder, Generalized Anxiety disorder, Attention Deficit Hyperactive disorder, and Borderline Personality disorder. (PSI, p.40.)

Ms. Chavez also had a very difficult childhood. She explained that her mother was an alcoholic who ultimately died at 46 as a result of the disease. (PSI, p.33.) She said that her family moved around a lot, and she was a shy child, so she had a difficult time making friends. (PSI, p.58.) And, when she was only 12 years old, her only friend died in a car accident. (PSI, p.58.) She also said that she was raped when she was 15 years old by a man she knew who spiked her drink at a party. (PSI, p.31.)

All of these problems likely led to Ms. Chavez's struggles with drug and alcohol abuse. She was diagnosed with alcohol and amphetamine dependence. (PSI, p.17.) However, her statements for the PSI, and at sentencing, show that Ms. Chavez has acknowledged that she needs treatment for these conditions, and she is now ready to pursue that treatment. She asked for a chance to participate in mental health court because she felt that she had been struggling with her mental health for years but never tried to address the issue because she was fearful of admitting she was "Crazy" and "Ending up like" her mother. (PSI, p.16.) She said that she realized now that her fear of confronting these issues led her to use of drugs to self-medicate and avoid "Real Life." (PSI, p.16.) She said that she could see now that this behavior only perpetuated a family trait, and she truly wanted help and felt that she could be successful. (PSI, p.16.) She explained that she was exhausted and tired of hiding from reality and said that she

was ready for change and “excited for a fresh start” in a new place. (PSI, p.16.) This was a significant change in her perspective on this issue because in 2011 she said she was unsure if she needed a treatment program. (PSI, p.61.)

Additionally, at the sentencing hearing, Ms. Chavez also spoke to her mental health issues. She acknowledged that she had been given chances before and failed but felt that she continued to fail because she did not confront her problems with mental health and thus avoided the source of her problems. (3/21/16 Tr., p.10, Ls.4-13.) She said that the community that she lived in before this offense did not have the resources to help her and, as a result, she was “falling between the cracks” (3/21/16 Tr., p.10, Ls.16-22.) She said she “couldn’t get help because” she “wasn’t crazy enough,” but nevertheless she could not function. (3/21/16 Tr., p.10, Ls.22-24.)

Mental health problems, substance abuse, and a difficult childhood are all recognized mitigating factors. *Hollon v. State*, 132 Idaho 573, 581 (1999); *State v. Nice*, 103 Idaho 89, 91 (1982); *State v. Walker*, 129 Idaho 409, 410 (Ct. App. 1996). In light of all these mitigating factors, Ms. Chavez’s sentence was excessive because it was not necessary to achieve the goals of sentencing. A shorter sentence would ensure that society was protected and serve as a significant deterrent. It would also provide appropriate retribution for this offense. Most importantly, however, it would allow Ms. Chavez to more quickly pursue a new life and career while actively participating in the treatment she has acknowledged that she needs. Indeed, given the facts of this case, Ms. Chavez’s sentence was not necessary and therefore unreasonable and an abuse of discretion.

CONCLUSION

Ms. Chavez respectfully requests that this Court reduce her sentence as it deems appropriate. Alternatively, she requests that her case be remanded to the district court for a new sentencing hearing.

DATED this 19th day of October, 2016.

_____/s/_____
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of October, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

MALINA KAE CHAVEZ
INMATE #100934
C/O BONNEVILLE COUNTY JAIL
605 N CAPITAL
IDAHO FALLS ID 83402

DEBORAH A BAIL
DISTRICT COURT JUDGE
E-MAILED BRIEF

CRAIG A STEVELEY
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

RPA/eas